

MINUTES

TENNESSEE BOARD OF MEDICAL EXAMINERS

January 18 and 19, 2005

The meeting was called to order at 8:45 a.m., in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 fifth Avenue North, Nashville, Tennessee 37247-1010, by Vice-President Ms. Nina Yeiser. Other members present were: Drs. Michael Zanolli, Charles White, Subhi Ali, Mitchell Mutter, George Eckles, Barbara Engelhardt, Sam Barnes, Allen Edmonson and Ms. Mary Johnson. Absent members were: Dr. David Cunningham and Mr. Mark Brown. Staff present included: Rosemarie Otto, Executive Director, Dr. Larry Arnold, Medical Director, Marsha Arnold, Unit Manager, Sandra Powell, Administrator and Robert Kraemer, Advisory Attorney.

Ms. Shirley Corry, with the Office of General Counsel addressed the Board and introduced the new attorneys at OGC. Laurie Doty, Deputy General Counsel will head the BME litigation team.

Minutes

Minutes from the November 16 and 17, 2004 meeting were reviewed. Dr. White made a motion to approve the minutes and Dr. Ali seconded the motion. The motion carried unopposed.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators, Athletic Trainers and Physician Assistants were reviewed by the Board. Dr. Edmonson made a motion to ratify the approval of licenses and the motion was seconded by Dr. Engelhardt. The motion carried unopposed.

New Applicant Interviews

Robert Jason Kellett, MD- Dr. Kellett is applying for a license to practice medicine in Tennessee. Dr. Kellett previously appeared before the Board on November 16, 2004 regarding disciplinary actions during his residency program. Dr. Kellett was required to seek an assessment through the Vanderbilt Comprehensive Assessment Program. Because some issues arose from the VCAP Assessment, the Board decided to have Vanderbilt submit the assessment to Dr. Roland Gray, Medical Director for the Tennessee Medical Foundation for evaluation. Dr. Gray was present to give a report on

the evaluation. The Board asked Dr. Kellett questions about his medication and what he had learned. Dr. Edmonson suggested Dr. Gray receive some type of follow-up or quarterly reports. Dr. Mutter made a motion to grant a license to Dr. Kellett and Dr. Eckles seconded the motion. The motion carried. Dr. Ali asked if the motion included the quarterly reports. Dr. Zanolli stated the Board did not vote on including the quarterly reports and was not part of the motion. Mr. Kraemer informed the Board that if the quarterly reports are going to be a formal condition of Dr. Kellett's licensure, another motion would need to be done. Dr. Edmonson made a motion to grant Dr. Kellett a license pending a letter from Dr. Gray stating authorization has been given to him to receive the quarterly reports. Dr. Ali seconded the motion. Drs. Mutter, Zanolli and Eckles opposed. The motion passed.

Edmundo Omar Larranaga, MD- Dr. Larranaga is applying for a license to practice medicine in Tennessee. Dr. Larranaga appeared before the Board on November 16, 2004. Dr. Larranaga has been practicing in Columbia and there were large gaps in his practice history in the United States. The Board's decision was to get an evaluation of Dr. Larranaga's clinical skills while employed at the Veteran's Administration Hospital in Michigan and that evaluation should come from his supervisor. Dr. Larranaga must obtain a CPEP (Colorado Physician Evaluation Program) evaluation and submit it to the Board for review at the next meeting. Dr. Larranaga was not present and has not made any contact with staff or submitted any documentation the Board requested. Dr. Mutter made a motion to deny licensure to Dr. Larranaga. Dr. Ali seconded the motion. The motion carried unopposed.

Melinda Lee Sutton, MD-Dr. Sutton is applying for a license to practice medicine. Dr. Arnold reviewed Dr. Sutton's application file for the Board. Dr. Sutton had issues during two of her residency programs and was deployed to Kuwait nine months before her rotation was completed. She later had to take remedial courses before her residency was completed. After further discussion, Dr. Mutter made a motion to grant Dr. Sutton a license and Dr. White seconded. Dr. Edmonson opposed and Dr. Ali abstained. The motion passed.

Sitaram G. Kadekar, MD-Dr. Kadekar is applying for a license to practice medicine in Tennessee. Dr. Kadekar's application for licensure was denied at the November 16, 2004 board meeting because Dr. Kadekar could not provide an original source transcript from his medical school. Dr. Arnold informed the Board that Dr. Kadekar had the official transcript submitted to the staff office. Dr. White made a motion to rescind denial and grant a license to Dr. Kadekar. Dr. Engelhardt seconded the motion. The motion passed unopposed.

Jeffrey Wayne Allen, MD- Dr. Allen is applying for a Single purpose license in Tennessee. Dr. Arnold reviewed Dr. Allen's application file for the Board. Dr. Allen has had five (5) malpractice cases in the last five years. After further discussions, Dr. Zanolli made a motion to grant a license to Dr. Allen. Dr. White seconded the motion. The motion passed unopposed.

Reinstatement Interviews

Thomas Burton Merritt, MD-Dr. Merritt is applying for reinstatement of his Tennessee medical license. Dr. Arnold reviewed Dr. Merritt's application file for the Board. Dr. Merritt's Georgia license was suspended in 1994 and was later put on probation for three (3) years. Dr. Edmonson made a motion to grant Dr. Merritt reinstatement of his medical license. Ms. Johnson seconded the motion. The motion passed.

Floyd Edward Nicley, MD-Dr. Nicley is applying for reinstatement of his Tennessee medical license. Dr. Arnold reviewed Dr. Nicley's application file for the Board. Dr. Nicley has not practice since 2001. Dr. Ali asked Dr. Nicley if he has completed any certified continuing education hours. Dr. Nicley stated he will be attending one in February. Dr. White made a motion to grant reinstatement contingent upon Dr. Nicley completing forty (40) hours of continuing medical education hours. Ms. Johnson seconded the motion. The motion passed unopposed.

Ratification of Denial of License

Norman Bull Clinkscales, MD-Dr. Clinkscales is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed Dr. Clinkscales' application file for the Board. Dr. Clinkscales has sexual boundary issues in other states. Dr. Arnold recommended the Board deny him a license. Dr. White made a motion to uphold Dr. Arnold's recommendation for denial of licensure. Dr. Ali seconded the motion. The motion passed unopposed.

Rule Action

Mr. Jerry Kosten, Rule Coordinator, reported that no one attended the rulemaking hearing which was held January 18, 2005 regarding requirements to retake the USMLE and revision of Rules pertaining to Radiologists Assistants. Mr. Kosten stated he received several comments regarding the rules. Mr. Kosten informed the Board that the USMLE rule will add one point each time an applicant took and failed the exam. The revision of the Rules for Radiologists Assistants was in reference to administering sedation. Dr. Zanolli made a motion to amend the Radiologists Assistants' rule pertaining to the presence in the room and omit all wording after Radiologist. Dr. Edmonson seconded the motion. Dr. Zanolli made a motion to adopt the rule as amended and Dr. Edmonson seconded the motion. The rule was adopted unanimously by roll call vote.

Mr. Kosten requested the Board to authorize a rulemaking hearing regarding renewal and reinstatement rules for Athletic Trainers. Dr. Edmonson made a motion to send the proposed rule to rulemaking hearing. Dr. White seconded the motion. The motion passed unanimously.

Mr. Kosten informed the Board about the criminal background checks and how they will be handled and requested the Board to authorize a rulemaking hearing regarding mandatory criminal background checks. Ms. Johnson made a motion to send the

proposed rule to rulemaking hearing. Dr. Edmonson seconded the motion. The motion passed unopposed.

Mr. Kosten informed the Board of the actions taken by the Committee for Physician Assistants regarding Free Health Clinic and Volunteer Practice Requirement rules. The rulemaking hearing was held December 21, 2004. Dr. White made a motion to accept the rule as stated and Dr. Edmonson seconded the motion. The motion passed unanimously by roll call vote.

Discussion

The Board reviewed the actions taken by the Committee for Physician Assistants in regards to adopting a policy regarding failure to obtain Continuing Education requirements. Dr. Ali made a motion to ratify the actions taken by the Committee for Physician Assistants in adopting the policy and Dr. Edmonson seconded the motion. The motion passed.

Mr. Robert Kraemer reviewed the proposed position statement regarding Ordering Controlled Substances and revised form addendum for prescribers and their supervising physicians to the Board. Mr. Kraemer presented the Board with a position statement allowing Registered Nurses and Physician Assistants to order controlled substances. Dr. Ali stated he had a problem with the policy because it may lead to problems in ordering. After further discussion, Dr. Ali made a motion not to accept the position statement Dr. Eckles seconded the motion. The motion carried unopposed. Dr. Edmonson made a motion to deny approval for Physician Assistants to order controlled substances and Dr. White seconded the motion. The motion carried unopposed.

Mr. Kraemer reviewed the follow up letter sent to the Attorney General by the BME on behalf of the Advisory Committee on Acupuncture requesting a formal Attorney General's opinion. Mr. Kraemer informed the Board that a response had not been received. Dr. Edmonson made a motion to send another letter and Dr. White seconded the motion. The motion passed.

Ms. Otto asked Mr. Kraemer to review Revenue enhancing tax compliance efforts for the Board. Mr. Kraemer stated enhancing tax comes from Revenue and is aimed at larger item purchases.

The Board reviewed and discussed developing and adopting a policy regarding failure to obtain continuing education requirements. Dr. Mutter made a motion to adopt the policy statement parallel to the Physician Assistants' policy but to change the civil penalty amount to forty dollars (\$40). Ms. Johnson seconded the motion. Drs. Zanolli, Barnes and Edmonson opposed. The motion passed.

The Board discussed designating a member to attend the FSMB's annual meeting to be held May 12-14, 2005 in Dallas, Texas. Ms. Yeiser asked Dr. Ali if he would be interested in attending in which he stated he would like to attend.

Ms. Otto informed the Board of the renewal of the Tennessee Medical Foundation contract for 2005-2006. Dr. White made a motion to ratify the contract in principle and Dr. Zanolli seconded the motion. The motion carried unopposed.

Reports

Budget Report

Ms. Otto reviewed the financial report in Ms. Lisa Tittle's absence. Ms. Otto stated the deficit has been eliminated and replaced with a small surplus.

Director's Report

Ms. Rosemarie Otto, Executive Director reviewed the Director's report for the Board. Ms. Otto informed the Board that 60 Minutes aired a program on January 12, 2005 entitled "A Prescription for Death? Did Alternative treatment lead to a Patient's Death." The videotape will be viewed at the March, 2005 meeting.

Investigation Report

Ms. Denise Moran, Director with the Office of Investigation, reviewed her report for the Board. Ms. Moran informed the Board that there is a twenty percent (20%) increase in complaints.

Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator reviewed the disciplinary report for the Board. Ms. Phelps presented the Board with a list of those physicians being monitored and will give a year end report at a later date.

Office of General Counsel Report

Mr. Robert Kraemer reviewed his OGC report for the Board and reviewed the rules that are currently in process.

"Noteworthy" section for the Internet

The Board did not designate anything for the "Noteworthy" section of the internet.

Adjourned for lunch at 12:30 p.m. and reconvened in the Cumberland at 1:15 p.m.

Disciplinary Action

Mr. Kraemer stated that there were several consent orders at the last meeting which the Board requested, be reconsidered. Mr. Kraemer presented the names of James Ensor, MD, Martha Hodges, MX, Frederick Pelz, MD, Michael Posey, MD, and David Sharfman, MD for reconsideration of their consent orders. Dr. White made a motion to ratify the reconsideration of consent orders and Dr. Mutter seconded the motion. The motion carried unopposed.

Cumberland Room:

Panel: Mutter, Zanolli, Eckles, Barnes and Johnson

Order of Compliance

John Kennedy, MD- Dr. Kennedy was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. Dr. Mutter recused himself. Dr. Kennedy was in violation of T.C.A. Section 63-6-214 (b)(1), unprofessional conduct and T.C.A. Section 63-6-214 (b) (12), (13) and (14), illegal dispensing/prescribing controlled substances. The Agreed Order states that Dr. Kennedy's license to practice medicine in Tennessee was revoked effective May 9, 2000 for a period of no less than one year. Dr. Kennedy must surrender his DEA certificate immediately; seek an assessment by the Tennessee Medical Foundation and comply with the recommendations of the assessment; pay two Type A civil penalties of one thousand dollars (\$1,000.00) each for a total of two thousand dollars (\$2,000.00). Dr. Kennedy cannot apply for reinstatement or a new license to practice until he has met all of the terms of the order and completed any sentence imposed by the criminal court. Dr. Kennedy fulfilled the requirements of the 2000 Order by appearing before the Board in July, 2001. The 2001 Order required Dr. Kennedy to maintain TMF Advocacy equal to the length of his Federal Court probation and give authority to the TMF to provide annual reports to the Medical Board. The panel was informed that Dr. Kennedy has complied with the 2001 order. Dr. Zanolli made a motion to accept the order of compliance and Dr. Edmonson seconded the motion. The motion passed.

Larry Davenport, MD-Dr. Davenport was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. Dr. Davenport was charged with violating T.C.A. 63-6-214 (b) (1). Dr. Davenport's DEA number expired June 30, 1998 in which he negligently continued to write prescriptions for controlled substances. On numerous occasions, Dr. Davenport caused controlled substances to be prescribed for himself using another physician's name or DEA certificate number. These prescriptions were obtained by Dr. Davenport despite, or as a result of, his intentional or negligent failure to obtain the permission of the "prescribing physician". The Agreed Order, effective January, 2001 states, Dr. Davenport's license to practice medicine in Tennessee be suspended for a period of three months, or until he fulfills educational requirements. Dr. Davenport must provide to the Board proof of his successful attendance at:

- a) The three-day course, “Prescribing Controlled Drugs”, offered by Dr. Anderson Spickard, at Vanderbilt University’s Center for Professional Health; and
- b) A medical ethics course approved by Dr. James Roth, consultant to the Board;

Dr. Davenport was placed on probation for a period of two years effective date of the Order and may not seek reinstatement of his DEA registration until the completion of his period of suspension and the accomplishment of the education requirement. Dr. Davenport was assessed forty-nine (49) Class C civil penalties of one hundred dollars (\$100) each, totaling four thousand, nine hundred dollars (\$4,900), to be paid within six months of the effective date of the Order. Dr. Davenport is in compliance with the Board’s Order. Dr. Edmonson made a motion to issue the Order of Compliance and Ms. Johnson seconded the motion. The motion carried unopposed.

Letter of Reprimand

Randolph McKenzie, MD-Dr. McKenzie was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The Letter of Reprimand was handed to the panel for review. Dr. McKenzie was disciplined in Missouri for losing his hospital privileges. Dr. Mutter made a motion to accept the Letter of Reprimand and Dr. Edmonson seconded the motion. The motion passed.

Agreed Order

John Sindos Adams, MD-Dr. Adams was not present nor represented by legal counsel. Mr. Robert Kraemer represented the State. The Notice of Charges and Agreed Order of Reprimand were handed out to the panel for review. Dr. Adams is charged with violating T.C.A. 63-6-214(b) (20). Dr. Adams’ medical license is reprimanded and must pay one Type A civil penalty in the amount of five hundred dollars (\$500.00) within thirty (30) days of the effective date of the Order. Dr. Adams has already paid the required fees. Ms. Johnson made a motion to accept the Agreed Order of Reprimand and Dr. Zanolli seconded the motion. The motion passed unopposed.

Consent Order

Isaac M. Jalfon, MD-Dr. Jalfon was not present nor represented by legal counsel. Ms. Laurie Doty represented the State. The Consent Order was handed out to the panel for review. Dr. Jalfon is charged with violating T.C.A. 63-6-214(b) (1) and T.C.A. 63-6-214 (b) (5). Dr. Jalfon entered drug rehabilitation programs on two (2) separate occasions during the year 2003 to address his personal misuse of cocaine. The Consent Order states that Dr. Jalfon’s license to practice medicine in the State of Tennessee is hereby placed on probation effective immediately and shall remain on probation for a period of two (2) years. Dr. Jalfon shall enter into a contract with the Tennessee Medical Foundation and shall successfully maintain the advocacy of the TMF for a lifetime. If Dr. Jalfon fails to successfully maintain the advocacy of the TMF, he shall notify the Board in writing within three (3) business days. Dr. Jalfon must pay all cost of the

hearing. Dr. Eckles made a motion to accept the Consent Order. Dr Edmonson seconded the motion. The motion carried.

Adjourned at 3:00 p.m.

Tennessee Room

Panel: White, Engelhardt, Yeiser, Ali

Contested Case Hearing

James F. Nash, MD-Dr. Nash was present and represented himself. Ms. Tamanna Qureshi represented the State. The Honorable Robert Fellman, Administrative Law Judge presided. Ms. Qureshi handed out the Notice of Charges and Orders from Georgia, Virginia and California. Dr. Nash is charged with violating T.C.A. 63-6-214 (b) (1), T.C.A. 63-6-214 (b) (12) and T.C.A. 63-6-214 (b) (20). Dr. Nash has three out of state actions. Formal charges were filed against Dr. Nash by the Georgia Board for inappropriately prescribing narcotics to a patient and sexually assaulting that patient. Dr. Nash voluntarily surrendered his Georgia medical license. Dr. Nash's California medical license was summarily suspended and his Virginia license was suspended indefinitely. Ms. Qureshi gave her opening statement and submitted proof to the panel for review. Dr. Nash gave his opening statement. He informed the panel that he was not practicing at this time and would likely not practice again. Dr. Nash gave a short synopsis of what happened leading up to Georgia's charges. Ms. Qureshi asked Dr. Nash if he realized his Pennsylvania medical license was disciplined on October 5, 2004 mirroring Georgia's Order. Ms. Qureshi handed out Pennsylvania's Order to the panel for review. Ms. Qureshi gave her closing statement followed by Dr. Nash. Dr. Nash asked the Board to not place a fine on him because he is financially unable to pay. The panel went into deliberations. Dr. White informed Dr. Nash the State of Tennessee mirrors other states' actions. Dr. White made a motion to revoke the medical license of Dr. Nash and to accept the Finding of Facts #9-15. Dr. White made a motion to accept the Causes of Action #16 and Dr. Ali seconded the motion. The motion passed. Dr. White made a motion to assess civil penalties and let it be the cost of the hearing not a separate finding. Dr. Ali seconded the motion. The motion passed. Dr. White made a motion to accept the Order to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Ali seconded the motion. The motion passed unopposed.

Agreed Order

Stephen Ritchie, MD-Dr. Ritchie was not present nor represented by legal counsel. Ms. Tamanna Qureshi represented the State. The Amended Notice of Charges and Proposed Agreed Order were handed out to the panel for review. Dr. Ritchie is charged with violating T.C.A. 63-6-214 (b) (14). The Agreed Order states that Dr. Ritchie's medical license be placed on probation for a minimum period of two (2) years providing he complies with the following terms and conditions. Dr. Ritchie shall attend and complete, during the first year of probation, the three (3) day course entitled "*Prescribing*

Controlled Drugs” that is presented by The Center for Professional Health at Vanderbilt University Medical Center located in Nashville, Tennessee, or an equivalent course approved by the Board. Dr. Ritchie shall provide the Board proof of attendance and completion of the course required within eighteen (18) months from the date of the entry of this Agreed Order. Following the completion of the course required and within eighteen (18) months from the date of the entry of the Agreed Order, Dr. Ritchie shall personally appear before the Board and make a presentation, the duration of which shall be at least one (1) hour, on the subject of over-prescribing controlled substances. Any Continuing Medical Education course hours earned from attendance and completion of the course required shall be in addition to the CME course hours required to maintain licensure. Dr. Ritchie shall attend and complete the course entitled “*Buprenorphine & Office Based Treatment of Opioid Dependence*” that is presented by The American Society of Addiction Medicine, or an equivalent course approved by the Board, within ninety (90) days from the date of the entry of the Agreed Order. Dr. Ritchie must provide proof of attendance and completion of the course required within four (4) months from the date of the Agreed Order. Any CME course hours earned from attendance and completion of the course required shall be in addition to the CME course hours required to maintain licensure. Dr. Ritchie shall attend and complete twenty (20) hours of CME per year on the subject of addiction maintenance medicine for each year of probation. The CME required shall be in addition to the CME course hours required to maintain licensure. Dr. Ritchie shall pay ten (10) Type A civil penalties in the amount of five hundred dollars (\$500.00) each and shall assume all costs of complying with all provisions of the Order. The Board’s oversight and monitoring of Dr. Ritchie under the Agreed Order shall continue until he files a written petition for termination of the Board’s oversight and monitoring and personally appears before the Board to petition to have this probation lifted. If Dr. Ritchie violates the terms or conditions of this probation in any respect, the Board, after giving Dr. Ritchie notice and the opportunity to be heard, may determine that he is out of compliance with his probation and may revoke probation. Dr. White made a motion to accept the Agreed Order and Dr. Ali seconded the motion. The motion passed.

Letter of Reprimand

John Pence, MD-Dr. Pence was not present nor represented by legal counsel. Ms. Tamanna Qureshi represented the State. The Letter of Reprimand was handed out to the panel for review. Dr. Pence is charged with violating T.C.A. 63-6-214 (b) (1). Dr. Pence failed to provide competent medical services with compassion and respect for human dignity by neglecting to properly treat the bacterial meningitis of a nine (9) month old patient, and to respect the rights of those patients, colleagues and other health professionals by responding inappropriately to a call from an emergency room physician when a patient of his was presented to Roper Hospital North in a condition requiring emergency treatment. Dr. White made a motion to accept the Letter of Reprimand and Dr. Engelhardt seconded the motion. The motion carried.

Adjourned at 3:00 p.m.

Wednesday, January 19, 2005

9:15 a.m.

Cumberland Room

Panel: Edmonson, White, Yeiser and Engelhardt

Beryl Yancey, MD-Dr. Yancey was not present but represented by counsel who was not present. Ms. Wilma James represented the State. Ms. James handed out the Agreed Order to the panel for review. Dr. Yancey is charged with violating T.C.A. 63-6-214 (b) (1) and T.C.A. 63-6-214 (b) (4). The Agreed Order states that Dr. Yancey's medical license shall be placed on probation for a period of five (5) years commencing with the effective date of this Order. Dr. Yancey shall immediately cease to engage in the practice of obstetrics and gynecology commencing with the effective date of the Order. Dr. Yancey shall be permitted to provide only the basic gynecological care commonly provided by family medicine practitioners. Dr. Yancey is required to petition and appear before the Board of Medical Examiners to obtain the explicit permission of the Board before engaging in any other types of obstetric and/or gynecological procedures other than the basic gynecological care commonly provided by family practitioners even after the expiration of the probationary period established by this Order. Dr. Yancey shall attend the competency course offered by the Center for Personalized Education for Physician (CPEP) in Aurora, Colorado, or an equivalent course that is approved in advance by the Board and/or the Medical Director of the Board. In addition to the continuing medical education courses required each year to maintain her license to practice medicine in Tennessee, Dr. Yancey shall attend twenty (20) hours of family practice courses approved by the American Academy of Family Physicians per year for each of the five (5) years of probation. Dr. Yancey shall allow an investigator from the Department of Health to copy and/or review patient charts chosen at random by the investigator at any time during the period of probation and provide the copies to the Board and/or the Medical Director for review. Dr. Yancey is assessed three (3) Class A civil penalties in the amount of one thousand (\$1,000.00) dollars each, for a total of three thousand (\$3, 000) dollars, to be paid within six (6) months from the effective date of the Agreed Order. Dr. Yancey must personally appear before the Tennessee Board of Medical Examiners to petition the Board to lift the probation of her license to practice medicine. At such time, Dr. Yancey must show that all conditions placed on her Tennessee medical license have been maintained throughout the probationary period. After further discussion regarding frequency of state's random visits to Dr. Yancey's office for the purpose of chart review, a motion was made by Dr. Edmonson to ratify the Agreed Order. Dr. White seconded the motion. The motion passed unanimously.

Dr. Allen S. Edmonson, Secretary

Date

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